

cc: Ms. Daniels Rivera by Scan
Ms. Mailloux by Scan
Ms. Bordeaux by Scan
Ms. Marks by Scan
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SAPA File



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

February 4, 2026

CERTIFIED MAIL/RETURN RECEIPT

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NYS Office of the Medicaid Inspector General
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54 State Street, 9th Floor
Albany, New York 12207

RE: In the Matter of Garden of Eden Home ALP, LLC

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter.

If the appellant did not win this hearing, the appellant may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the appellant wishes to appeal this decision, the appellant may wish to seek advice from the legal resources available (e.g. the appellant's attorney, the County Bar Association, Legal Aid, OEO groups, etc.). Such an appeal must be commenced within four (4) months after the determination to be reviewed becomes final and binding.

Sincerely,

A handwritten signature in blue ink that reads "Natalie J. Bordeaux / 6/23".

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

JURISDICTION

The Department of Health (Department) acts as the single state agency to supervise the administration of the Medicaid Program in New York. 42 USC § 1396a; PHL § 201(1)(v); SSL § 363-a. The OMIG is an independent office within the Department with the authority to pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within the Medicaid Program. Such actions may include the recovery of improperly expended Medicaid funds. PHL §§ 30-32.

The OMIG determined to seek restitution of payments made to Garden of Eden Home ALP, LLC (Appellant) for Health Care and Mental Hygiene Worker Bonus claims deemed to have been ineligible for payment. The Appellant requested a hearing pursuant to Social Services Law (SSL) § 145-a and Department of Social Services (DSS) regulations at 18 NYCRR § 519.4 to review the OMIG's determination.

HEARING RECORD

OMIG witness: Jesse Dvorak, Medicaid Integrity Specialist

OMIG exhibits: 1-10

Appellant witness: Michelle Kogan, Administrator

Appellant exhibits: A, C

A transcript of the hearing was made. (T 1-109.) Each party submitted a post-hearing brief and the record closed January 6, 2026.

FINDINGS OF FACT

1. At all times relevant hereto, the Appellant was an adult care facility, located in Brooklyn, New York, enrolled as a provider in the New York State Medicaid Program, and

approved to operate an Assisted Living Program (ALP) pursuant to SSL § 461-1 and 18 NYCRR § 485.6(n). (T 61.)

2. By letter dated July 18, 2024, the OMIG advised the Appellant that it would conduct a review of the Appellant's records supporting its Health Care and Mental Hygiene Worker Bonus (HWB) claims paid by the New York State Medicaid Program from October 1, 2021 through March 31, 2024. To facilitate the OMIG's review, the Appellant was asked to provide the following information by August 1, 2024:

- W-2s, W-4s, 1099s, 1098 forms and yearly payroll summaries
- Employment start date and end date at the provider
- Job descriptions, titles, licenses, and/or employee credentials
- Payroll, timecards/attendance records and wage reporting statements for the review period
- Disbursement journal detail and bank statement[s] confirming bonus payments to employees
- Any workpaper used to determine eligibility for the [HWB] claims filed

(OMIG Exhibit 1.)

3. On January 30, 2025, the OMIG issued a draft audit report to the Appellant, advising that the OMIG determined that, on review of 46 HWB claims totaling \$62,000, the OMIG identified at least one error in each of those claims (identified in three disallowance categories), resulting in a total overpayment of \$55,439.75 (\$51,500 claims paid in error + \$3,939.75 in FICA tax). (OMIG Exhibit 2.)

4. On March 7, 2025, the Appellant submitted its response to the draft audit report, contesting the findings in disallowance categories 1 and 2. (OMIG Exhibit 3.)

5. On April 24, 2025, the OMIG issued a final audit report to the Appellant, which advised that, after considering the Appellant's response to the draft audit report, the OMIG's determination remained unchanged. At least one error was identified in all 46 claims audited, and the total overpayment was \$55,439.75. (Exhibit 4.)

6. The OMIG organized the 46 disallowed claims into the following categories:
 1. Bonus Incorrectly Paid to an Ineligible Employee (claim #s 1-4, 6, 7, 10-18, 21, 22, 25, 26, 29-46.)
 2. Incorrect Amount of Worker Bonus Paid to Employee (claim #s 21, 22, 24, 30, 31, 36, 38, 39.)
 3. Failure to Complete the Medical Reassessment (claim # 32 identified for corrective action only.)

(Exhibit 4.)

7. On May 2, 2025, the Appellant requested a hearing to contest the findings set forth in the final audit report. (Exhibit 5.)

ISSUES

Was the OMIG's determination to recover overpayments from the Appellant for HWB payments made to ineligible employees as described in disallowance category 1 correct?

Was the OMIG's determination to recover overpayments from the Appellant for incorrect amounts of HWB payments made to employees as described in disallowance category 2 correct?

APPLICABLE LAW

The HWB Program was implemented to pay bonuses to certain front line healthcare workers who were continuously employed by an employer for six-month periods ("vesting periods") between October 1, 2021 and March 31, 2024. SSL § 367-w(2)(d). For purposes of this program, an "employee" means certain front-line healthcare and mental hygiene practitioners, technicians, assistants and aides that provide hands on health or care services to individuals, to include, in relevant part: orderlies, medical assistants, clinical coordinators, all other health care support workers, other clinical staff/assistants and such titles as determined by the commissioner and approved by the direct of the budget. SSL §§ 367-w(2)(a)(i)-(iii).

In addition to the employee eligibility criteria set forth in SSL § 367-w(2)(a), frontline healthcare workers must be employed by a provider that is enrolled in the Medicaid Program or

that has a provider agreement to bill for services provided or arranged through a Medicaid Managed Care Program, including providers and facilities licensed under PHL articles 28 and 36. SSL § 367-w(2)(b)(ii).

The Department developed forms and procedures to identify the number of hours employees worked and to reimburse employers for HWB bonuses paid. Employers were required to determine employee eligibility for the HWB before paying bonuses and seeking reimbursement from the Department and to maintain and make available upon request all records, data and information relied upon in determining that an employee was eligible for the HWB. SSL § 367-w(3)(c). Employers were required to track the number of hours employees worked during each vesting period and submit reimbursement claims for HWB payments to the Department. SSL § 367-w(3)(b)(i). The HWB claim submission process also required qualified employers to electronically sign an attestation confirming that the employer determined each employee included in the claiming process is eligible for the bonus.¹

Employers shall maintain contemporaneous records for all tracking and claims related information and documents required to substantiate claims submitted for HWB payments for a period of no less than six years and shall furnish records and information, on request, to the OMIG. SSL § 367-w(3)(d). The OMIG is tasked, in coordination with the Commissioner of Health, with conducting audits, investigations and reviews of employers required to submit claims for the HWB. Inappropriately paid HWB claims constitute overpayments pursuant to 18 NYCRR §§ 518.1(b)-(c). SSL § 367-w(5).

¹ https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/docs/employer_attestation.pdf.

Hearings to review HWB overpayment determinations are conducted pursuant to 18 NYCRR Part 519. The Appellant has the burden of showing that the OMIG's determination was incorrect and that all claims submitted were due and payable. 18 NYCRR § 519.18(d)(1).

DISCUSSION

At the hearing, the OMIG presented the audit file and summarized the case, as required by 18 NYCRR § 519.17. The Appellant is contesting the first two categories of disallowances set forth in the final audit report.

Disallowance Category 1: Bonus Incorrectly Paid to an Ineligible Employee

The OMIG determined that in 37 instances pertaining to 20 employees, the HWB was incorrectly paid to Appellant employees who worked as home health aides, a title ineligible for the bonus program. (Exhibit 4.)

Department policy on the HWB has been issued in the form of "Frequently Asked Questions" (FAQs).² Although, as the Appellant pointed out, home health aides are front line and patient-facing workers who are "at serious significant risk of contracting communicable diseases from ALP residents" while performing their duties (T 47), personal care aides and home health aides are not identified in the statutory definition of "employee" for purposes of the HWB, nor are these titles listed in the FAQs as HWB-qualifying "all other health care support workers".

The FAQs identify qualified employees and worker titles and note explicitly that:

Homecare aides are not an eligible title for the [HWB] as they will be eligible for increased minimum wage payments pursuant to PHL 3614-f. As such, employees of Article 36 entities that fall under such titles (e.g., home health [a]ide, [p]ersonal [c]are assistant, home maker, etc.) are not eligible for the Bonus.

² https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/hwb_program_faq.htm.

The Appellant argued that the determination to deny HWB eligibility to home health aides is “arbitrary, capricious, an abuse of discretion” and “irrational,” because home health aides are “the lowest paid healthcare workers in the system” and all enumerated eligible job titles earn more than home health aides. (T 14.) In addition, the Appellant contended that the expected minimum wage increase did not take effect until after the HWB vesting period and therefore should not constitute grounds for excluding home health aides from receiving the bonus. (T 14, 83; Appellant’s post-hearing brief, pp. 10-11.)

The pertinent issue is not why the Department excluded home health aides from the HWB, but whether or not home health aides were eligible for the bonus at all. Eligible worker titles are limited by SSL § 367-w and the Department’s FAQs list of “all other health care support workers.” The OMIG deemed the home health aide (homecare aide as described in the FAQs) job title ineligible for the HWB because the legislature did not include this title in SSL § 367-w and it is not included in the Department’s FAQs explanation of “all other health care support workers.” This is a rational and reasonable exercise of Department policy making authority in the application of SSL § 367-w and PHL § 3614-f.

The Appellant’s argument that no information exists to demonstrate that home health aides employed by an ALP are ineligible for the HWB misrepresents the burden of proof in this hearing. (T 15, 43, 45; Appellant’s post-hearing brief, p. 9.) The Appellant bears the burden of proving that its home health aides were eligible for the HWB. *See* 18 NYCRR §519.18(d)(1).

It is well-established that the Medicaid Program utilizes a pay first and audit later approach to ensure prompt payments to providers. Contrary to the Appellant’s suggestion at the hearing that its HWB reimbursement claims were authorized because its submissions were accepted and paid (T 98), payment by the Medicaid Program does not signify that claims were

indeed payable and authorized. Payments are always subject to audit. 18 NYCRR § 504.3 and § 540.7(a)(8).

The Appellant has failed to establish that home health aides employed by an ALP were eligible for the bonus. The OMIG's determination to disallow claims identified in disallowance category 1 was correct and is affirmed.

Disallowance Category 2: Incorrect Amount of Worker Bonus Paid to Employee

The OMIG determined that in eight instances pertaining to seven employees, the employee was paid an incorrect bonus amount. This was a secondary finding for all listed claims other than claim # 24.

The HWB amount payable for eligible employees was based on the number of hours worked during each vesting period. For each vesting period, bonus amounts were authorized according to the following guidelines: (i) employees who worked an average of at least 20 but less than 30 hours per week over the course of a vesting period were eligible for a \$500 bonus; (ii) employees who worked an average of at least 30 but less than 35 hours per week over the course of a vesting period were eligible for a \$1,000 bonus; (iii) employees who worked an average of at least 35 hours per week over the course of a vesting period were eligible for a \$1,500 bonus; and (iv) full-time employees who are exempt from overtime compensation were eligible for a \$1,500 bonus. SSL § 367-w(4)(a).

At the hearing, the OMIG's witness, Jesse Dvorak, explained that the Appellant's payroll records documented that the employees identified in the disallowed claims worked an average of fewer weekly hours during certain vesting periods than were eligible for the bonus amounts claimed by the Appellant. (T 27.) Mr. Dvorak provided some examples within disallowed claims that were representative of the overall findings. Claims #s 21 and 22 pertained to an

employee to whom the Appellant paid \$1,500 per vesting period after the Appellant claimed that the employee worked an average 40 hours per week in two vesting periods. However, the Appellant's documentation showed that the employee worked fewer average weekly hours. Payroll documentation pertaining to claim # 21 reflected a weekly average of less than 30 hours worked by the employee identified in this claim. If HWB eligibility was established, the maximum bonus payable to this employee for the period October 1, 2021 through March 31, 2022 was \$500. Supporting documentation for claim # 22 reflected a weekly average of 33 hours worked. If all other eligibility criteria were met, this employee would be authorized to receive a \$1,000 bonus for the period April 1, 2022 through September 30, 2022. (Exhibit 10; T 29-30, 32-34.)

Although the Appellant objected to the findings in this category in its response to the draft audit report (Exhibit 3) and in its hearing presentation (T 28), the Appellant offered no information to establish that the findings in this category were not correct. The OMIG's findings in disallowance category 2 are affirmed.

DECISION

The OMIG's determination to recover overpayments from the Appellant for HWB payments made to ineligible employees as described in disallowance category 1 was correct and is affirmed.

The OMIG's determination to recover overpayments from the Appellant for incorrect amounts of HWB payments made to employees as described in disallowance category 2 was correct and is affirmed.

Dated: February 4, 2026
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge

To:

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